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Letter dated 10 August 2006 from the Acting Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Austria submitted pursuant to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Adamantios Th. **Vassilakis**
Acting Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 7 August 2006 from the Permanent Mission of Austria addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Austria to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) and with reference to the Chairman's letter dated 15 May 2006 has the honour to transmit herewith Austria's report on the implementation of Security Council resolution 1624 (2005) (see enclosure).

Enclosure

Implementation of Security Council resolution 1624 (2005)

Report by Austria

In reply to the letter of the Chairman of the Security Council Counter-Terrorism Committee of 15 May 2006 requesting information on the implementation of the provisions of Security Council Resolution 1624 (2005) Austria submits the following information:

Paragraph 1

What measures does Austria have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further Steps, if any, are under consideration?

The Austrian Penal Code clearly prohibits incitement to commit a terrorist act or acts.

According to Section 12 of the Austrian Penal Code ("Treatment of all participants as offenders") not only the immediate offender is held criminally liable but also any person who incites another person to commit the offence (or who contributes to the offence committed by another person). Therefore the inciting person is subject to the same criminal provision (and the same range of sentence) as the immediate offender.

Incitement according to this provision means intentionally causing the immediate offender's decision to commit the offence, even if the latter is in principle already determined to commit an offence. Incitement is therefore the intentional, direct or indirect (also the incitement to incite the immediate offender is covered) causing of the commission of an offence by creating or furthering the immediate offender's decision to act. Neither a direct link between the inciting and the incited person nor a particular intensity is required. Depending on the circumstances, a mere request could be sufficient. On the other hand, the coercion of somebody to commit an offence is incitement too.

The inciting person must prompt the incited person to a concrete criminal act, which however needs not to be determined in all details. The incitement can be directed to a single person or several people. The person addressed needs not to be determined as such for the inciting person. Even the incitement of an entirely open group of persons has been decided to be covered by Section 12 of the Penal Code. Furthermore, in case the immediate "offender" acts without intention (because of an error caused by the inciting person) or is unfit to be sentenced because of his/her mental insanity, Section 12 of the Penal Code is applicable for the person, who causes the decision to act.

In addition to Section 12 of the Penal Code, Section 282 of the Austrian Penal Code criminalises the instigation to and approval of criminal offences. According to paragraph 1 of this provision, whoever instigates to a criminal offence – meaning any criminal offence, including such which could be deemed as terrorist offences – in a publication, on broadcast or by any other means that might render this message available to the broad public, is to be punished by imprisonment up to three years if

he/she may not be punished more seriously for participating in the offence itself according to Section 12.

For the sake of completeness it should be mentioned that, according to Section 282 paragraph 2 of the Penal Code, whoever publicly (in the aforementioned sense) approves of a criminal offence, that has been committed intentionally and can be punished with imprisonment of more than one year, in a way that might insult the general sense of law or that might incite the commission of such offences, is likewise to be punished.

Unlike Section 12 of the Penal Code the application of Section 282 paragraph 1 requires publicity. However, its scope is broader because the criminal act, to which the offender instigates, needs not to be a concrete one. Criminal liability pursuant to Section 282 paragraph 1 is also not subject to the actual commission of the (kind of) criminal act to which the offender instigated.

The Austrian Penal Code also prohibits preparatory acts to commit a terrorist act or acts.

According to Section 15 paragraph 2 of the Austrian Penal Code, preparatory acts constitute a criminal offence as soon as the offender materializes his decision to commit the offence with an action immediately preceding the commission of the offence. This is also applicable with regard to a person inciting the immediate offender. Therefore criminal liability of the inciting person is established as soon as he/she materializes his/her decision to incite another person to commit an offence with an action immediately preceding the act of incitement. Criminal liability of the inciting person is independent from the fact whether the immediate offender acts accordingly or not.

As all necessary legal provisions are in place to prohibit and prevent incitement to commit a terrorist act or acts (see above), no further legal steps are currently under consideration.

What measures does Austria take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

On 1 January 2006, the new aliens act (Federal Law Gazette I Nr. 100/2005) entered into force. It provides for specific measures to combat terrorism:

- The possibility of issuing a residence ban if the alien is suspected of belonging or having belonged to a terrorist organisation or if the behaviour of the alien poses a threat to public order and safety, i.e. by inciting to violence, inciting to commit a crime or a terrorist act.

- The issuing of visas may be denied if the alien poses a threat to public order or safety, i.e. if the alien belongs to a criminal or terrorist organisation.

- For the purpose of public safety, the Ministry of the Interior in cooperation with the Ministry for Foreign Affairs can decide that nationals of certain states or travellers on specific travelling routes need a visa for flight transit.

According to the settlement and residence law a residence permit may not be issued to a foreigner if a ban on residence is in place or if his residence may constitute a threat to public safety. This may be the case if the foreigner rejects the fundamental values of democratic states and societies and if he/she communicates or has communicated these ideas to a wider public with the intent of incitement or if the foreigner supports a person or organisation, which pursues these goals.

Paragraph 2

How does Austria cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

A distinction needs to be made between the neighbouring Schengen-members, Germany and Italy, and all other neighbouring countries.

1. As regards the Czech Republic, Slovakia, Hungary, Slovenia, Switzerland and Liechtenstein:

Austria has – following the idea that a greater level of safety and security in the surrounding countries also means more safety and security at home - always devoted a great amount of attention to the working-relations with all neighbouring countries.

There are three main reasons for this approach:

First, Austria is currently bordering six countries which are not part of the Schengen-area (meaning that Austria has – according to the Schengen Implementing Convention - to control an external border of approximately 1.300km).

Second, following the EU enlargement of 2004 and the successful negotiations on the participation of Switzerland and Liechtenstein in Schengen, the Schengen-area will include also these six countries by 2008 (or later, depending on the Schengen-evaluation process), meaning that

- border-control to these six countries will be abolished;

- the principle of free-movement will be established between the current and the new Schengen-members;

- it will be of utmost importance to have a well-working network of cross-border-police-cooperation in place to avoid any security-deficit in this field.

Third, thinking of the vastly increasing numbers of travellers and, as well, of the vastly expanding crime-area it is of utmost importance to have a tight network of contacts available to be able to counteract in an appropriate manner wherever and whenever necessary.

Depending on the neighbouring-country there are the following contacts:

- monthly to quarterly regular meetings at central level;
- regular meetings at regional level;
- almost weekly meetings at district-level.

Contrary to the district- and regional-meetings, where basically latest developments are exchanged and special cross-border-operations as well as other common actions (like joint patrols) are being planned, the meetings on central level cover many more topics. Among those topics are:

- border-control and -surveillance matters;
- illegal migration (cases and trends);
- asylum (cases and trends);
- anti-trafficking (latest developments);
- criminal police and (where appropriate);
- terrorism ("hot" cases and trends being discussed at special meetings led by the Office for the Protection of the Constitution and Counterterrorism).

Austria has concluded Police-Cooperation-treaties with all neighbouring countries which include all necessary tools, such as cross-border-surveillance, hot pursuit, controlled delivery, common police-cooperation-centres, provisions allowing and regulating an intensive information-exchange and the exchange of liaison-officers.

Over the past years Austria has enhanced the deployment of law enforcement officers and document advisors and is in particular cooperating with the neighbouring countries in this field. Currently Austria has:

- 18 law enforcement officers abroad (competence being law-enforcement in general, ranging from migration to border-control and also terrorism);
- 4 permanent document advisors abroad and 37 fully trained advisors ready to go on short term missions.

Austria has developed an intranet-platform called ARGUS, where – among others – descriptions of documents are being stored and messages about newly detected cases of falsified or forged documents can be transmitted to all relevant authorities in Austria and to Austrian embassies and consulates abroad. In this field, Austria is closely cooperating with the German Land of Bavaria and Switzerland (including a regular exchange of newly acquired data and information).

2. As regards Germany and Italy:

All forms of cooperation set out above also exist with regard to Germany and Italy. However, border-controls to these two countries have already been abolished in 1998.

In addition Austria and Germany

- have recently put into force a common Police-Cooperation-treaty, which provides for a closer cooperation than set out in the Schengen acquis and which is currently considered being a model for other countries in their efforts to further develop the Schengen acquis in this field, and

- are partners, among other European countries, in the so-called Prüm-Treaty concerning the deepening of cross-border cooperation for combating terrorism, transnational crime and illegal migration.

Paragraph 3

What international efforts is Austria participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilisations in an effort to prevent the indiscriminate targeting of different religions and cultures?

Austria, in its foreign policy, has long ago established, and maintains, a priority area of action in the field of the dialogue of religions. In 1993, on the initiative of the then Foreign Minister Alois Mock, the first high-level Christian-Islamic conference took place in Vienna under the title: "Peace for Mankind – Foundations, Problems and Future Perspectives from the Christian and Islamic Points of View". It was followed by a series of similar events which brought together Christian, Islamic and Jewish leaders throughout the Nineties and up to today.

In 2003, religious leaders of Europe's 20 million Muslims met in Graz, Austria for the first European Conference of Imams and heads of Islamic Centres.

In their final document, they endorsed the following principles:

- A rejection of all forms of fanaticism, extremism and fatalism;

- Human rights as a central feature of Islam;

- Loyalty to the constitutional order and the rule of law;

- Pluralism as an Islamic principle willed by God.

From 14 to 16 November 2005, the Austrian Foreign Ministry hosted the conference "Islam in a Pluralistic World" in Vienna which counted the Presidents of Afghanistan and Iraq, Hamid Karzai and Jalal Talabani, Nobel Peace Prize Winner Shirin Ebadi, and numerous high-ranking religious and political leaders among its participants. At this conference, Austrian Foreign Minister Ursula Plassnik warned against "representing terrorism as a product of a war between cultures and religions" and asked "to make a stand against simplifications, prejudices and stereotyped enemies".

From 7 to 9 April 2006, the second European Conference of Imams took place in Vienna. The final document of this conference reaffirmed the European Islamic religious leaders' commitment to human rights and democracy and inter alia called for an increased participation of Muslims in the democratic processes of the countries they live in.

In the context of the Austrian presidency in the European Union, the following events took place:

- On 20 and 21 March 2006 Austria and the Commission held a Seminar on radicalisation and recruitment in Trier (Germany) which focused on radicalisation in prisons, threats posed by returning Jihadists and strategies to encourage recruits to leave terrorist groups.

- On 28 and 29 March 2006 Austria and Europol organised a seminar on radicalisation and recruitment and the Internet in The Hague.

- On 19 May 2006 an event took place in Vienna in the field of "dialogue of cultures and religions". Purpose of the conference was to analyse and compare various models of integration and dialogue at local, regional and national level, in order to contribute to the implementation of the strategy against radicalisation and recruitment.

With the aim of setting up a European network of experts between all the member states of the European Union, the Ministry of the Interior has initiated a project called "Forum Islam in European Perspective". Its objectives are the integration and institutionalisation of Islam in Europe and it particularly focuses on integration issues and on the prevention of terrorism. Firstly, the network will allow experts to exchange experience on these issues. Secondly, this project should help to develop confidence and cooperation between state institutions and Muslim communities.

What steps is Austria taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

The Ministry of the Interior publishes a yearly report on recent developments in the field of extremism and terrorism. Another yearly report contains detailed information on threats caused by terrorism. Both reports contribute to the dissemination of information and to the sensitisation of the public.

With a view to implementing Resolution 1624 (2005), the Office for the Protection of the Constitution and Counterterrorism, located in the Ministry of the Interior, started the so-called Security Dialogue. This dialogue is carried forward between religious communities in Austria and public institutions, such as schools and aims at the prevention of subversive activities in the fields of education, culture and religion.

Paragraph 4

What is Austria doing to ensure that any measures taken to implement paragraphs 1, 2, and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law, and humanitarian law?

The Austrian Criminal Procedure Code (CPC) does not provide separate procedures for prosecuting persons suspected of terrorist acts, leading or participating in a terrorist association or criminal acts committed in such a context. This means that legally there are no differences between criminal proceedings based on a suspicion of criminal acts with a terrorist background and proceedings based on a suspicion of other criminal acts. Therefore, all provisions of the CPC, which apply to other suspects before or during trial, are to be applied to those suspected of criminal acts with a terrorist background. In particular, cases are to be adjudicated by the competent court according to the CPC and the rights of defence are the same as in all other cases.

The Austrian Penal Code and the CPC form integral parts of the Austrian legal order which is based on the respect of human rights and the rule of law. In particular, the European Convention on Human Rights (ECHR) has constitutional force in Austria. Under the ECHR, all laws, administrative acts and court sentences are subject to judicial review by the European Court of Human Rights.

As for administrative measures, Article 18(1) of the Federal Constitution stipulates that the entire public administration shall be based on law. This holds inter alia also for any coercive measure taken by an administrative organ.

Austria's laws regulating the admittance of refugees are in conformity with international human rights standards and the 1951 Convention relating to the status of refugees. The implementation of UNSC resolution 1624 has not engendered any changes to these laws or their application.

As regards humanitarian law, Austria is a party to the four Geneva Conventions of 1949 and to the two additional protocols of 1977. International Humanitarian Law forms an integral part of the general training of troops, NCOs and officers of the Austrian army. Furthermore, in the course of preparatory training for international peace-keeping missions, aspects of IHL specific to the particular region of deployment are regularly included. Austrian forces are currently not engaged in any combat missions.